

NTSB Order No.
EM-131

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION BOARD
WASHINGTON, D. C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D. C.
on the 4th day of April, 1986

JAMES S. GRACEY, Commandant, United States Coast Guard,

v.

ANTHONY J. McALLISTER, III, Appellant.

Docket: ME-118

ORDER DISMISSING APPEAL

This appeal challenges an order admonishing appellant for his alleged negligence in navigating as licensed operator a tug-tank barge combination that on January 9, 1983 grounded at Diamond Reef, New York and spilled gasoline into the Hudson River. The order admonition was issued by a Coast Guard administrative law judge on August 17, 1984 following an evidentiary hearing completed on August 15, and it was affirmed by the Vice Commandant (acting by delegation in Appeal No. 2404) on September 9, 1985. By motion to dismiss filed February 26, 1985, the Coast Guard contends that the appeal should be dismissed because the Board lacks jurisdiction to review an order of admonition.

The cases cited by the Coast Guard in support of its motion reflect the Board's longstanding determination that its review authority extends only to orders revoking, suspending or denying seaman licenses, not to orders of admonition.¹ In response to the motion, appellant argues that the Board, for a variety of reasons, should disavow precedent and rule that it does have authority to review orders of admonition. We find appellant's arguments unpersuasive.

Appellant contends, first, that the Board's construction that 49 USC 1903 only permits review by the Board of specifically enumerated orders of the Commandant is overly narrow. He suggests that orders of admonition were not included within the enumeration

¹Commandant v. Lewskinen, 3 NTSB 4178 (1977), Commandant v. Schuiling, NTSB Order No. Em-109 (1984), and Commandant v. Wilkins, NTSB Order No. Em-118 (1975).

of orders subject to our review because the statutes under which the Coast Guard exercises suspension and revocation authority "do not themselves specifically contemplate or mention a sanction of admonition." (Reply at 2, emphasis in original). We do not believe this factor advances appellant's position. If the Coast Guard's statutes do not contemplate orders of admonition, the Board's authority to review specific types of orders issued pursuant to those statutes could not have been intended to apply to them. If, on the other hand, orders of admonition are contemplated by the statutes through not mentioned, then the failure to list them among the orders subject to Board review reveals either an intent to exclude them from our review authority or an oversight we, of course, would be unable to remedy.² It is therefore of no consequence, for purposes of determining the scope of the Board's jurisdiction, that the Board might possess the expertise necessary to review orders of admonition or that the exercise of such review authority might be consistent with principles of judicial economy, as appellant maintains. As we have previously noted, "[t]he Board...has no discretion either to enlarge its review function or to disregard limitations placed on it by law" (Commandant v. Leskinen, supra, at 2, n.4).

ACCORDINGLY, IT IS ORDERED THAT:

1. The motion to dismiss is granted, and
2. The instant appeal is dismissed.

BURNETT, Chairman, GOLDMAN, Vice Chairman and LAUBER, Member of the Board, concurred in the above order.

²Similarly, we are not empowered to correct whatever arbitrariness may result from the fact that we can review probationary suspensions even though the economic impact of such suspensions on a seaman may be no different from that of an order of admonition.